

Information Commissioner's Office

# Consultation:

## Direct Marketing Code

Start date: 8 January 2020

End date: 4 March 2020

# Introduction

The Information Commissioner is producing a direct marketing code of practice, as required by the Data Protection Act 2018. A draft of the code is now out for public consultation.

The draft code of practice aims to provide practical guidance and promote good practice in regard to processing for direct marketing purposes in compliance with data protection and e-privacy rules. The draft code takes a life-cycle approach to direct marketing. It starts with a section looking at the definition of direct marketing to help you decide if the code applies to you, before moving on to cover areas such as planning your marketing, collecting data, delivering your marketing messages and individuals rights.

The public consultation on the draft code will remain open until **4 March 2020**. The Information Commissioner welcomes feedback on the specific questions set out below.

You can email your response to [directmarketingcode@ico.org.uk](mailto:directmarketingcode@ico.org.uk)

Or print and post to:

Direct Marketing Code Consultation Team  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF

If you would like further information on the consultation, please email the [Direct Marketing Code team](#).

## Privacy statement

For this consultation we will publish all responses received from organisations except for those where the response indicates that they are an individual acting in a private capacity (eg a member of the public). All responses from organisations and individuals acting in a professional capacity (eg sole traders, academics etc) will be published but any personal data will be removed before publication (including email addresses and telephone numbers).

For more information about what we do with personal data please see our [privacy notice](#)

Q1 Is the draft code clear and easy to understand?

- ☐ Yes  
☒ No

If no please explain why and how we could improve this:

The Hospice Lotteries Association endorses the submission of the **Lotteries Council** and makes the following additional points.

1/ The IOC seems to be more concerned with style than substance in this guide. The whole consultation is not framed around the content. The ICO is assuming that the content is correct and not subject to challenge, which it is not (or at least cannot be proven to be) on either score.

2/ There are numerous unqualified statements advised to be good practice, that are not backed up by evidence and could just be personal opinion.

3/ On page 51, the draft code states *"any unusual or unexpected processing ought to be at the forefront of any layered privacy information."* It is particularly unhelpful, even with the examples shown, to expect organisations to draft their Privacy Policies accordingly, if they cannot expect to see potential circumstances that may need such wording.

4/ The use of tracking pixels to trace the opening or not needs far more clarification of why it is to be deemed a non-essential cookie and subject to PECR

Q2 Does the draft code contain the right level of detail? (When answering please remember that the code does not seek to duplicate all our existing data protection and e-privacy guidance)

- ☐ Yes  
☒ No

If no please explain what changes or improvements you would like to see?

There is insufficient legal justification for some of the statements;

- The inter-relationship between the bases of 'consent', which is lauded as good practice, and legitimate business interests – presumably something less. There is no legal framework for treating these two differently or defining one as better practice than the other.
- The HLA is concerned at the apparent 'choice' between using consent or legitimate business interests as a basis for lawful marketing. We have not seen any legal reason for a choice and question why it needs be made. Surely half of a database can be qualified by consent if it is held, and the other half used on the basis of legitimate business interests, if it has not proven possible to obtain firm consent and until it is.

Q3 Does the draft code cover the right issues about direct marketing?

☐ Yes

☒ No

If no please outline what additional areas you would like to see covered:

Again a question on style, not substance, and designed to get a yes answer and tick a box. The actual answer is that it covers some of the right issues, but not others.

It leaves too many important areas undefined or is qualified by statements that are not definitively proven correct.

There is very little in this guide that would assist organisations that seek to purchase data through third parties. Whilst it is not a practice that is generally common in Hospice Lotteries, it is an obvious area in which this guide underinforms.

Q4 Does the draft code address the areas of data protection and e-privacy that are having an impact on your organisation's direct marketing practices?

☒ Yes

☐ No

If no please outline what additional areas you would like to see covered

However, just addressing them does not mean that they are clear or that they have solved any of the issues we face.

Q5 Is it easy to find information in the draft code?

☒ Yes

☐ No

If no, please provide your suggestions on how the structure could be improved:

Q6 Do you have any examples of direct marketing in practice, good or bad, that you think it would be useful to include in the code

☐ Yes

☒ No

If yes, please provide your direct marketing examples :

To be fair, few of the scenarios presented apply to Hospice Lotteries, or to charities' more commercial ventures generally, but as these are probably too narrow for others, it is not worth pursuing.

Q7 Do you have any other suggestions for the direct marketing code?

It is not enough to assert that something is best practice without industry engagement. This is the second consult on this code, and neither have actually engaged industry in finding solutions.

# About you

Q8 Are you answering as:

- ☐ An individual acting in a private capacity (eg someone providing their views as a member of the public)
- ☐ An individual acting in a professional capacity
- ☒ On behalf of an organisation
- ☐ Other

Please specify the name of your organisation:

Hospice Lotteries Association

If other please specify:

Q9 How did you find out about this survey?

- ☐ ICO Twitter account
- ☐ ICO Facebook account
- ☐ ICO LinkedIn account
- ☐ ICO website
- ☐ ICO newsletter
- ☐ ICO staff member
- ☒ Colleague
- ☐ Personal/work Twitter account
- ☐ Personal/work Facebook account
- ☐ Personal/work LinkedIn account
- ☐ Other

If other please specify:

Thank you for taking the time to complete the survey